

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 11

APPALACHIAN POWER COMPANY<sup>1</sup>

Employer

and

Case No. 11-RC-6654

LOCAL UNION 978, INTERNATIONAL  
BROTHERHOOD OF ELECTRICAL WORKERS,  
AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

The Employer, Appalachian Power Company, is a Virginia corporation engaged in the generation, transmission, and sale of electric power across western Virginia and southern West Virginia with various facilities throughout the Greater Roanoke/Rocky Mount Virginia area, including a distribution dispatch center (herein DDC) located in Roanoke, Virginia. The Petitioner, Local Union 978, International Brotherhood of Electrical Workers, AFL-CIO, currently represents several bargaining units of production and maintenance employees employed by the Employer throughout Virginia and West Virginia, including employees employed in the Roanoke & Rocky Mount Districts Bargaining Unit (herein Roanoke unit).<sup>2</sup> The Petitioner now seeks to represent a unit of all full-time and regular part-time Distribution Dispatchers I, II, III, IV and V employed by the Employer at its DDC in Roanoke, Virginia, but excluding all casual employees, temporary employees, confidential employees, clerical

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<sup>1</sup> The Employer's name appears as amended at hearing.

employees, accounting employees, technical employees, sales employees, janitors, production and maintenance employees, meter revenue operations employees, and guards, professional employees and supervisors as defined in the Act.<sup>3</sup> The Petitioner filed this petition under Section 9(c) of the National Labor Relations Act.<sup>4</sup> A hearing officer of the Board held a hearing and the parties filed post-hearing briefs.

As evidenced at the hearing and in the parties' briefs, the issues presented are two-fold. The first issue is whether the petitioned-for Dispatchers are supervisors as defined under Section 2(11) of the Act. If it is found that the petitioned for Dispatchers are not supervisors, the second issue to be resolved is whether a self-determination election is appropriate to determine whether the Dispatchers wish to be represented in the existing Roanoke unit or if the only appropriate unit is a stand-alone unit of Dispatchers. The Petitioner contends that the Dispatchers are not supervisors and seeks an Armour-Globe self-determination election whereby the Dispatchers would elect whether they want to be represented in the existing Roanoke unit or remain unrepresented. The Employer asserts that the Dispatchers are supervisors, and, therefore, not employees as defined in Section 2(3) of the Act. In the alternative, the Employer asserts that if the Dispatchers are employees under the Act, the only appropriate unit in which they can be represented is a separate, stand-alone bargaining unit. Thus, the Employer opposes a self-determination election.

I have considered the evidence and the arguments presented by the parties on the issues. As discussed below, I have concluded that the Dispatchers are not supervisors as defined in Section 2(11) of the Act. Furthermore, I conclude that an Armour-Globe self-determination election is appropriate. Accordingly, I shall direct an election in the unit described below. To

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<sup>2</sup> The parties stipulate that there is no contract bar to the instant petition.

<sup>3</sup> The unit description appears as amended at hearing.

provide a context for my discussion of the issues, I will first provide a brief overview of the Employer's operations and the collective bargaining history between the parties, including a discussion of the job classifications in the Roanoke unit. I will then provide an in-depth discussion of the Employer's Roanoke DDC operations, including a discussion of the Dispatchers' duties. Finally, I will provide my legal analysis of the issues presented.

## I. EMPLOYER'S OPERATIONS

The Employer is a subsidiary of American Electric Power (herein AEP), an investor owned electric utility company based in Columbus, Ohio that provides service in 11 states. AEP owns 7 operating companies, including the Employer, all of whom report directly to AEP's CEO and other AEP corporate departments including human resources, the fleet group, the generation group, and the distribution group.

The Employer services the geographical area spanning southwestern Virginia, southern West Virginia, and the city of Kingsport, Tennessee via several generating plants and a large transmission grid by which it transports power from the generating plants to its service area. In addition to its transmission system, the Employer operates a distribution system. The distribution system is responsible for the distribution of electrical power for both residential and commercial use. The transmission and distribution systems are demarcated by voltage. Thus, any facility operating at greater than 40,000 volts is classified as a transmission facility and the employees who service the transmission facilities are generally referred to as Station Servicers. A facility operating at less than 40,000 volts is classified as a distribution facility and employees who repair and maintain the distribution line are referred to as Line Servicers.

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<sup>4</sup> In or around March 2006, the Union requested that the Employer recognize it as the exclusive collective bargaining representative of the dispatchers at issue. The Employer declined the Union's request.

The Dispatchers in contention work at the Employer's Roanoke DDC, which falls under the Employer's distribution operations. Phil Wright is the Vice-President of Distribution and oversees four Managers of Distribution Systems (herein MDS), each of whom are responsible for the distribution system in their assigned territory. Mike Mercier is the MDS assigned to the Roanoke territory, which includes the cities and surrounding areas of Lynchburg, Fieldale, Rocky Mount and Roanoke, Virginia. Reporting to Mercier are four Supervisors of Distribution Services (herein SDS) who are responsible for the oversight of the Employer's 43 service centers and other smaller reporting locations.

## **II. COLLECTIVE BARGAINING HISTORY**

Although the parties have enjoyed a bargaining relationship spanning sixty-five years, there has been no collective bargaining on behalf of the dispatchers.<sup>5</sup> Nonetheless, the Petitioner currently represents eleven units of employees employed by the Employer.<sup>6</sup> There are four "generation" bargaining units which consist of employees employed as unit operators, equipment operators, welders, coal yard workers, and machinists, at one of the Employer's four generation plants. Although there are four separate contracts, negotiations for the generation group is done collectively. In addition, there are seven "utility" bargaining units consisting of employees

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<sup>5</sup> During the hearing, the Petitioner solicited testimony from witnesses regarding the Transmission System Operators (herein TSO) employed by a different operating company in a bargaining unit located in Tulsa, Oklahoma. Specifically, it appears that the Petitioner sought to establish that the TSO in Tulsa have the same job responsibilities and duties as the Dispatchers at issue, in support of its contention that the Dispatchers are employees under the Act. The testimony on this issue was conclusory and I find that, to the extent it may be relevant, the Petitioner failed to establish that the TSO position under a different operating company is identical to the Dispatcher position in contention.

<sup>6</sup> The Petitioner asserts that it represents thirteen bargaining units employed by the Employer. To the contrary, the Employer asserts that the Petitioner only represents eleven bargaining units employed by the Employer, as two of the bargaining units are employed by Ohio Power, a separate operating company. The Employer admits that in the near future the two Ohio Power bargaining units will become part of its jurisdiction. The Petitioner failed to present testimonial or documentary evidence to dispute the Employer's assertion that the two bargaining units fall under a different operating company, thus, I find that at the present time the Petitioner only represents 11 bargaining units employed by the Employer.

employed in various classifications throughout Virginia, West Virginia and Kingsport, Tennessee, including, but not limited to, line mechanics, station mechanics, meter electricians, fleet service mechanics and distribution support. Similarly to the generation group, all seven utility contracts are negotiated together. Although the contracts are negotiated collectively, they are not identical.<sup>7</sup>

The Roanoke unit is part of the utility group and consists of approximately 70 employees. The collective bargaining agreement for the Roanoke district provides 5 lines of progression in various job classifications, with the first position listed being the position with the greatest expertise and the last position listed being an entry level position. None of the lines of progression provide for bidding rights into the Roanoke DDC. Below is a brief description of each line of progression.

The first line of progression covers approximately 40 employees employed in the Employer's line department in the positions of Area Servicer/General Servicer (herein Servicers) and Line Mechanic A, B, C and D. Generally, Area Servicers and General Servicers are the two Roanoke bargaining unit classifications dispatched to an outage by the Dispatchers in contention. However, in some situations a Line Mechanic A will be dispatched, as that individual may be capable of performing the same work. In a storm situation, Servicers as well as other classifications in the Line progression, including a Line Mechanic A, B, C and D, will be called-in to assist. Within the line department there are also 3 employees employed in the Underground

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<sup>7</sup> The Petitioner is a member of the IBEW System Council U-9 (herein the System Council), a council consisting of the nine IBEW locals that represent bargaining unit employees employed by AEP operating companies. Recently, the System Council, AEP and the seven operating companies negotiated a master agreement that is pending ratification. If ratified, the master agreement would apply to a total of 33 bargaining units across AEP properties, including bargaining units represented by the Petitioner. The master agreement provides for standardized AEP policies, including mandatory wage rates for all bargaining unit job classifications. The local agreements would supplement the master agreement by providing procedures for daily operations, including call out procedures, overtime, seniority promotions and other day-to-day work conditions.

Line Mechanic A, B, C or D classifications. The second line of progression covers 5 employees in the Employer's station department and consists of the Station Electrician A, B and C positions. The third line of progression covers approximately 16 employees employed in the Employer's meter services department and includes employees who perform meter reading and electrical work. The positions in this department are Meter Electrician A, B and C. The fourth line of progression is within the fleet service department. There are currently 2 employees employed in the classifications of Fleet Technician A, B and C. Finally, the fifth line of progression is in the distribution support department. The two classifications within the department are Driver/Groundworker and Groundworker. Currently, there are no employees employed in this department.

There are five physical locations covered by the Roanoke collective bargaining agreement, including the Roanoke service center, the Rocky Mount service center, the John Vaughn Center (herein "JVC") in Salem, Virginia, a small garage in Cloverdale, Virginia, and a small garage in Moneta, Virginia. A majority of these bargaining unit employees work out of the Roanoke service center.

### **III. THE EMPLOYER'S OPERATIONS AT THE ROANOKE DDC**

As stated above, the Dispatchers work at the Roanoke DDC, managed by Mike Jones. Jones manages the entire Roanoke DDC staff which consists of a staff associate, an electrical engineer, two dispatcher coordinators, two dispatcher supervisors and the 27 Dispatchers in contention. Similarly to MDS Mercier, Jones reports directly to Vice-President Wright.

#### **Description of the Roanoke DDC**

The DDC is located in the basement of a large 6-floor office building in Roanoke, Virginia, known as the Employer's "Franklin Road" facility. The Franklin Road facility is also home to various departments of the Employer, including human resources, customer operations,

external affairs, records, graphics, marketing, office services, asset planning and the corporate communications department. The Employer's dispatch center for its transmission system is also located at the Franklin Road facility.

The DDC is a 24/7 operation and Dispatchers generally work 12-hour shifts with rotating days off.<sup>8</sup> The two dispatcher supervisors work 8-hour day shifts, Monday through Friday, thus a majority of the time, Dispatchers work without immediate on-site supervision.

Normally, the Dispatchers work in an office environment throughout the day. However, on occasion, they are sent into the field for training and development purposes to work with groups of employees they interact with daily, including line personnel and meter reading operations technicians. This type of cross-training is typically performed on an annual basis.

While in the office, the Dispatchers work in a cubicle that has a computer work station and a telephone. The computer provides access to several databases, including the Outage Management System (herein OMS) database, an electronic outage reporting system through which certain lines can be closed or re-energized for the performance of maintenance work during an outage. The computer also provides access to the call-out database used to dispatch Servicers, as discussed further below.

#### *Dispatchers' Responsibilities*

The Dispatchers are responsible for the planning, directing, and switching activities that are required to take the Employer's equipment out of service for scheduled maintenance work outages and to return service during unscheduled outages. Because of the nature of their position, Dispatchers must be knowledgeable about the Employer's distribution system and the protective devices located on the system so they can direct Servicers to the location of the

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<sup>8</sup> There are "relief dispatchers" who do not work the 12-hour shift rotations, but instead work 8-hour shifts Monday through Friday and cover a shift when regular Dispatchers are absent.

outage. The Dispatcher classifications are Dispatcher I, II, III, IV, and V, with the Dispatcher V position being an entry level position. Dispatchers are normally paired and then assigned to a particular geographical area.<sup>9</sup> Below is a detailed overview of the Dispatchers' responsibilities with respect to the dispatching of Servicicers during outages.

AEP maintains four call centers that service both residential and commercial customers throughout the eleven states. Although a call from anyone of the four call centers could be transmitted to the Roanoke DDC, there is only one call center physically located in the Employer's service area. When a customer calls to report an outage, a call center agent solicits information regarding the outage and enters that information into the OMS database and that information is then transmitted to the Dispatchers. The Dispatchers use the OMS database to analyze the trouble call and geographically locate the source of the outage. If there is more than one customer call reporting the same outage, those calls are grouped together into a trouble order. On average, the Dispatchers handle approximately 275 trouble orders per day, and these trouble orders span the Employer's entire 42,000 mile distribution line.

In processing a trouble order, there are several factors Dispatchers must consider. One factor is the potential harm to the public. As discussed above, a trouble order in the OMS database may reflect several outages occurring at the same time. If there are multiple outages at the same time, the Dispatcher must prioritize the outages based on potential safety conditions, referred to as "hazards" that could endanger the public. Hazards include conditions such as down or low wires, trees that have fallen on wires, and broken utility poles.<sup>10</sup> A second factor is the critical nature of the customer experiencing the outage. Hospitals, water and sewage treatment plants, 911 dispatch centers and certain infrastructures for communities are given high

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<sup>9</sup> It is unclear from the record as to whether the Dispatchers rotate in and out of the various geographical territories.

<sup>10</sup> Sometimes a service center may send a hazard call directly to a Servicicer.

priority. A third factor the Dispatcher must consider is the number of customers affected by the outage. Outages affecting large numbers of customers receive top priority. Finally, the Dispatchers also factor in weather conditions. If hazardous weather conditions arise after hours, the Dispatchers decide how many line personnel are required to handle the workload. These above-described factors are outlined in AEP's service restoration plan which sets forth the priorities for restoration of service for all of its operating companies.

Once the dispatcher has considered the above factors, he or she determines how many line personnel are needed and then calls to dispatch the Servicicers to the outage. The Employer maintains a call-out database which the Dispatchers use to call and dispatch Servicicers. Each service center enters into the callout database the name of the Servicicer assigned to cover a certain geographical area on a particular day of the week, Monday through Sunday, and a specific time of day during regular work hours and after hours. The names of the individual Servicicers maintained in the call-out database change depending on employee work schedules. A clerical employee assigned to the service center is responsible for determining who is in the call-out database and updating the database, with guidance from the local SDS. At any given time there are around 150 line personnel listed in the call-out database.

The call-out database also determines the order in which personnel are dispatched. In this regard, the database lists the primary person on-call and a back-up person, should the primary be unavailable. If the outage requires more than two Servicicers, the Dispatcher contacts the service center duty supervisor, which is normally a line crew supervisor, tells the supervisor how many additional Servicicers are needed, and he or she assumes the responsibility of calling-in additional people to perform the work. If both the primary and back-up persons are unavailable or if they decline work, the Dispatcher contacts the service center's duty supervisor, and, again, it becomes that supervisor's responsibility to find coverage. A Servicicer's failure to accept a call

is documented by the Dispatcher in the call out database. On average, Servicers refuse dispatcher call-outs a couple times a year.

During work hours, the Dispatchers use the Employer's 800 megahertz radio on their computer or a cell phone to contact line personnel. After hours, the Dispatchers use a telephone to call the line personnel at home. The calls between Dispatchers and Servicers are automatically recorded.

Once the Servicer arrives at the location of the outage, the Dispatcher directs the Servicer to the device, such as a circuit breaker or line fuse, that is suspected of causing the outage. The Servicer checks to see if the device detected by the OMS database is indeed the device that caused the outage. Once the source is confirmed, the Servicer calls the Dispatcher, reports the status of the device and then proceeds to patrol the line to locate the cause of the outage. While on location, it is the Servicers' responsibility to clear any potential hazards or take whatever steps are necessary to protect the safety of the public. In fact, Employer policy mandates that all employees report any unsafe conditions. The Servicer and Dispatcher are in constant communication, sharing pertinent information relating to the outage to ensure a safe resolution. Due to safety measures, the Employer maintains a standard procedure mandating that Servicers obtain permission from Dispatchers before re-energizing or closing a line, as there may be other personnel servicing that same line that could be harmed.

The distribution system has large circuits that tie in with other distribution circuits through a set of switches. During an outage, the Dispatchers will look at the loading on the circuit, that is, the amount of electrical current on the system, and determine whether the loading can be safely switched to an adjoining circuit so that customers' service can be restored. This process is referred to as "switching". The Dispatchers plan the entire process of switching. In this regard, Dispatchers develop actual switching orders which are used to guide the line

personnel step-by-step when they switch the loading from one circuit to another. The Dispatcher will give the line personnel the overall switching plan and then each step in the plan is dispatched verbally to the Servicer, who then repeats the instruction back to the dispatcher for confirmation.

Switching is technical, complex work and if performed incorrectly could endanger the public, the line crew and the integrity of the equipment on the distribution system. The switching of distribution circuits must be carefully planned and directed. Generally, Dispatchers I and II, the more experienced dispatching personnel, and the two dispatcher coordinators jointly develop the switching orders.<sup>11</sup> Although switching orders are performed on a case-by-case basis, the DDC maintains files with previously implemented switching orders that Dispatchers can use as long as they insure that the switching order is still accurate and safe.

Line personnel do not have the authority to create and direct switching orders. Even during switching, a Servicer cannot re-energize or close a circuit without permission from the Dispatcher. Again, as explained above, this is to insure the safety of the line crew and the public.

#### **IV. LEGAL ANALYSIS**

As stated above, the issues presented are whether the Dispatchers described above are supervisors within the meaning of Section 2(11) of the Act, and, if they are found to be employees, whether the Board should conduct an Armour-Globe self-determination election to allow the Dispatchers to elect whether they want to be represented in the existing Roanoke unit. Below is a discussion of the relevant case law and its application to the evidence presented.

##### **A. Supervisory Status**

Section 2(11) of the Act defines the term supervisor as “any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge,

assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.” Supervisory status under the Act is determined by individuals' duties not by his or her title or job classification. Demco New York Corp, 337 NLRB 850, 855 (2002). To meet the definition, a person needs to possess only one of the 12 specific criteria listed, or the authority to effectively recommend such action. Ohio Power Co., v. NLRB, 176 F. 2d 385 (6<sup>th</sup> Cir. 1949), cert. denied 338 U. S. 899 (1949). The exercise of one of the specified criteria or the authority to effectively recommend such action must involve the use of independent judgment. Harborside Healthcare, Inc. 330 NLRB 1334 (2000). To exercise independent judgment, “...an individual must at minimum act, or effectively recommend action, free of the control of others and form an opinion or evaluation by discerning and comparing data.” Oakwood Healthcare Inc., 348 NLRB No. 37, slip op. at 9 (2006) Judgment is not independent if it is dictated by detailed instructions, whether they be written in company policy, verbal instructions from a higher authority or provisions in a collective bargaining agreement. Id.

The burden of proving supervisory status lies with the party asserting that such status exists, and the lack of evidence is construed against the party asserting supervisory status. Dean & Deluca New York, Inc., 338 NLRB 1043, 1047 (2003); accord Kentucky River Community Care Inc., 532 U.S. 706, 711-712 (201). The party seeking to prove supervisory status must establish it by a preponderance of the evidence. Dean & Deluca, 338 NLRB at 1047; Bethany Medical Center, 328 NLRB 1094, 1103 (1999). Mere inferences or conclusory statements without detailed, specific evidence of independent judgment are insufficient to establish supervisory authority. Sears, Roebuck, & Co., 304 NLRB 193 (1991). The Board has warned

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<sup>11</sup> On occasion, Dispatcher III personnel will be expected to develop simple switching orders.

against construing supervisory status too broadly because an employee deemed to be a supervisor loses the protection of the Act. See, e.g. Vencor Hospital-Los Angeles, 328 NLRB 1136, 1138 (1999); Bozeman Deaconess Hospital, 322 NLRB 1107, 1114 (1997).

In regard to whether the Dispatchers possess any of the twelve criteria listed in Section 2(11), there is no evidence in the record that they have the authority, in the interest of the Employer, to hire, transfer, suspend, lay off, recall, promote, discharge, reward, discipline, adjust employee grievances, or effectively recommend such actions.<sup>12</sup> Thus, this discussion will focus on whether the Dispatchers exercise independent judgment in assigning and responsibly directing the Servicers.

#### Assign

The Employer asserts and, therefore, bears the burden of demonstrating, that the dispatchers exercise independent judgment when assigning Servicers to outages. At hearing, the Employer's witnesses testified that Dispatchers exercise independent judgment when they: (1) call in Servicers, (2) grant overtime; (3) assign Servicers to a particular job location; (4) reassign Servicers from their regularly assigned routine work to an outage and (5) prioritize work orders. Although the evidence demonstrates that the Dispatchers engage in the above tasks, I find that these assignments do not require the exercise of independent judgment as they are dictated and controlled by detailed policies and databases established and maintained by the Employer.

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<sup>12</sup> Although not argued extensively in its brief, at hearing, there was testimony from Employer witnesses alluding to the fact that Dispatchers can effectively recommend the discipline of Servicers. In this regard, the Employer's witnesses testified that there have been several incidents where Servicers were disciplined or required to undergo additional training based on reports made by a Dispatcher to a ASDS. In addition, there was testimony that Dispatchers are "expected" to report Servicer irregularities to management. I find this evidence to be insufficient to establish that Dispatchers can effectively recommend discipline, as the record is devoid of any evidence that Dispatchers actually recommend discipline, as opposed to merely reporting an incident to management. I also note that there is no evidence establishing whether management conducts its own independent investigation of the incident or merely relies on the report from the Dispatcher. Moreover, there was testimony that reports from employees, other than Dispatchers, have also resulted in the discipline of both bargaining unit and non-bargaining unit employees. Thus, the record does not establish the Dispatchers have the authority to effectively recommend discipline.

In Mississippi Power & Light Company, 328 NLRB 965 (1999), overruling Big Rivers Electric Corp., 266 NLRB 380 (1983), the Board analyzed whether distribution dispatchers of an electric utility, similar to those here, are supervisors under the Act.<sup>13</sup> In Mississippi Power, the distribution dispatchers were similarly responsible for monitoring the status of the distribution system, directing field employees in the repair of outages, prioritizing work orders based on a “critical customer” list, and determining whether it was necessary to call-in personnel after-hours. Id. at 965. Like the dispatchers here, the distribution dispatchers in Mississippi Power used a computer database to locate outages and also prepared and directed switching orders that were implemented by service personnel to restore outages. Id. at 966. The dispatch room where the distribution dispatchers worked was similarly a 24/7 operation, with periods of time when the distribution dispatchers were unsupervised. Id. at 965. However, unlike the dispatchers here, the distribution dispatchers in Mississippi Power had the authority to call in additional dispatchers if he or she was overloaded. Id. at 966.

Under those facts, the Board determined that the distribution dispatchers were not supervisors under Section 2(11) of the Act, as they did not exercise independent judgment in assigning or directing work. Mississippi Power, 328 NLRB at 972-974. Essentially the Board found that although the record evidence established that the distribution dispatchers made “assignments”, such assignments did not require significant use of independent judgment because the assignments were made within the confines of established protocol. Id. at 972-973.

Similarly to the distribution dispatchers in Mississippi Power, there is insufficient evidence in the record to establish that the Dispatchers exercise independent judgment when

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<sup>13</sup> The Employer argues that the Region should follow the Board’s determination in Big Rivers (CITE). As Big Rivers was subsequently overruled, I am bound to follow current Board law as outlined in Mississippi Power. Furthermore, the Employer seems to argue that the Region should take administrative notice of a prior decision in a different Region finding that dispatchers of another AEP operating company were supervisors. I find that I am in no

making “assignments”, such as calling in Servicers, granting overtime, directing Servicers to the source of the outage, reassigning Servicers from their regular routine work to an outage, or prioritizing work orders. In this regard, although the evidence demonstrates that the Dispatchers have the authority to call in Servicers, this authority is defined and confined by the Employer’s well-established call out procedures which mandate who and in which order Servicers are called in at any given time. This database is not maintained by the Dispatchers, but instead by a clerical employee and line crew supervisor at the service centers. There is no evidence that Dispatchers have any input into which Servicers are available through the call-out database, nor is there evidence that Dispatchers can independently select in which order Servicers are dispatched nor can they deviate from the call-out database. To the contrary, the Dispatchers are required to call the primary Servicer first. If both the primary and secondary Servicers decline work, the Dispatcher must contact the service center duty supervisor and request assistance. It then becomes the duty supervisor’s responsibility to determine who to call and actually make the call, without any assistance or input from the Dispatcher.

The Employer asserts that the Dispatchers exercise independent judgment when determining whether line personnel or Station Servicers should be directed to report for duty. However, the evidence establishes that the complexity of the switching plan dictates whether a Servicer or Station Servicer is dispatched to the outage. The Dispatchers are the very individuals, along with Dispatcher Coordinators, responsible for creating the switching orders. As discussed below, their creation and selection of switching orders does not reflect the use of independent judgment by dispatchers, thus, knowledge that a switching order may be more complex or involved than another, does not in and of itself reflect the exercise of independent

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way bound by a different Region’s determination, especially since that decision issued prior to the overruling of Big Rivers.

judgment. Furthermore, the testimony established the geographical proximity to the outage also determines whether a Servicer or Station Servicer is dispatched to the outage. Thus, Roanoke DDC Manager Jones testified that on occasion, through the joint efforts of the line department, station department and DDC, the determination is made in advance as to who should be called where extended travel may delay the repair of an outage.

Although the Dispatchers initially determine how many Servicers are needed, this determination is based on their review of the outage under AEP's service restoration plan and does not entail the exercise of independent judgment. Furthermore, the Employer failed to present evidence as to whether the Dispatchers' have the ultimate authority to call in more than two Servicers at any given time. As the record stands, it appears that even if the Dispatcher initially determines that more than two Servicers are necessary to repair the outage, he or she must call the service center duty supervisor who ultimately decides who to call in and actually makes the call.

The Dispatchers do not exercise independent judgment in granting overtime, as they do not "grant" overtime. To the contrary, similar to the employer in Mississippi Power, the Employer's call-out database and procedures grant overtime to the Servicers. As discussed above, Dispatchers have no input as to which Servicers are available through the call out database. Dispatchers merely report to the Servicers that the Employer is requiring overtime. If the Servicer refuses the call, the Dispatcher simply makes a notation in the call-out database. The Roanoke collective bargaining agreement requires that the Employer track the call out performance of each Servicer subject to the call-out procedure, thus this notation is pursuant to contractual requirements. There is no evidence that the Dispatchers can compel Servicers to work overtime. Furthermore, there is no evidence that Dispatchers are required to report the

Servicer's refusal of a duty to the supervisor, nor is there evidence that Dispatchers have any authority to take adverse action against the Servicer for failing to accept the call.

The Dispatchers' assignment of Servicers to a particular location on the distribution line is determined by the location of the outage, and, thus, does not reflect the use of independent judgment. Logic dictates that service personnel be directed to the device or area in need of repair. The record is devoid of evidence that the Dispatchers have the authority to assign Servicers to physical locations or tasks other than those required to address a planned or unplanned outage.

The Dispatchers occasional reassignment of Servicers from their routine work to an outage does not reflect the use of independent judgment. I find that the testimony on this issue to be conclusory, as the Employer failed to give specific concrete examples of Servicers being reassigned by a Dispatcher from their routine task to an outage. Nevertheless, it appears that the Employer's guidelines and policies mandate that outages be given priority over other customer services, such as the installation of new service. Thus, the Dispatchers reassignment of a Servicer to an outage is simply in accordance with well-established Employer policy.

Finally, the Dispatchers' prioritization of work does not require independent judgment, as AEP's restoration plan lists factors that dictate the priority of work orders. For example, like the employer in Mississippi Power, AEP's service restoration plan provides that the Employer maintain a critical customer list that dictates the order in which customers receive service in outages. AEP's service restoration plan further provides that priority be given to those outages that pose the greatest potential of harm. Thus, if a Servicer tells the Dispatcher that he or she cannot report to an emergency outage quickly based on their current location, the Dispatcher, after input from the Servicer, determines whether to call another Servicer who can respond more quickly. The Dispatcher's determination to dispatch another Servicer is not based on the

exercise of independent judgment, but instead on the Employer's mandates that emergency situations always be given high priority. Commonsense, not independent judgment, dictates that in an emergency situation a Servicer who is closer to the outage should be dispatched first.

Since the decision in Mississippi Power, the Board has clarified the term "assign" as it is used in Section 2(11) of the Act. In Oakwood Healthcare, Inc., 348 NLRB No. 37 slip op. at 4 (2006), the Board stated that the term "assign" refers to the:

"...act of designating an employee to a place (such as a location, department or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant overall duties, i.e. tasks, to an employee.... In sum, to 'assign' for purposes of 2(11) refers to...the designation of significant overall duties to an employee, not to the ...ad hoc instruction that the employee perform a discrete task."

Even under the analysis set forth in Oakwood, the Dispatchers do not exercise independent judgment when dispatching Servicers. In this regard, although the Dispatchers designate Servicers to a place, that being the location of the outage on the distribution line, that place is dictated by the source of the outage not the Dispatchers' own judgment. Obviously Dispatchers have no control over where the outage occurs.

With respect to the appointment of time, the Dispatchers do not appoint the Servicers to a designated time, as the record clearly establishes that line crew supervisors determine the regular schedules of Servicers. Furthermore, as discussed above, a clerical and supervisor at the service center determine overtime schedules for the Servicers as they maintain the Employer's call-out database.

Finally, the Dispatchers provide only ad hoc instruction on a discrete task – the task of repairing an outage. The line crew supervisors, not the Dispatchers, assign Servicers to their routine tasks and overall duties. Although Dispatchers can reassign Servicers from their regular work tasks to an outage, as discussed above, this reassignment is based on the Employer's established guidelines that outages take priority over routine customer service.

Responsibly Direct

The Employer asserts that the Dispatchers are supervisors because they use independent judgment to responsibly direct the Servicers as they repair outages. Similarly to the distribution Dispatchers in Mississippi Power, the Dispatchers here are responsible for creating/selecting switching orders and maintaining constant communication with the on-location Servicers as they implement the switching orders and repair the outages. In analyzing whether the creation/selection of switching orders equates to supervisory status, the Board in Mississippi Power stated

“Clearly, the distribution dispatchers and system Dispatchers exercise substantial and significant independent judgment in applying their own technical training, experience and expertise to the portion of their jobs which involves the selection or design of the proper switching sequences for planned or emergency outages. This, however, does not constitute the exercise of Section 2(11) supervisory independent judgment. The performance of their own job entails the exercise of special knowledge or expertise, and that is why they are among the Employer’s highest paid employees. But that is quite different from the exercise of independent judgment in overseeing the work of others.”

Mississippi Power, 328 NLRB at 973.

Based on the above, it is clear that although the Dispatchers here may create/select switching orders, their expertise and technical skill in creating switching orders does not, in and of itself, demonstrate supervisory status. To the contrary, it only demonstrates that their positions require special knowledge.

The constant communication between Dispatchers and Servicers regarding the implementation of the switching orders also does not reflect an independent judgment to direct, but instead reflects the routine transmittal of the step-by-step process necessary to repair an outage. As the Board found in Mississippi Power, the relay of a step-by-step switching sequence is “almost [a] routine or clerical dispatching function and does not entail the exercise of supervisory independent judgment.” Mississippi Power, 328 NLRB at 974.

Recently in Oakwood Healthcare, the Board also clarified the term “responsibly direct”, finding that:

“...for direction to be ‘responsible,’ the person directing and performing the oversight of the employees must be accountable for the performance of the task by the other, such that some adverse consequence may befall the one providing the oversight if the tasks performed by the employee are not performed properly....thus, to establish accountability for purposes of responsible direction, it must be shown that the employer delegated to the putative supervisor the authority to direct the work and the authority to take corrective action, if necessary. It must also be shown that there is a prospect of adverse consequences for the putative supervisor if he/she does not take these steps.”

Oakwood Healthcare, 348 NLRB No. 39 at slip op 9-10.

Here, there is no evidence that Dispatchers are held accountable for the performance of the line personnel. Roanoke DDC Manager Jones testified that the Employer runs various reports that review the length of time it takes to restore an outage and switching errors. Although Jones testified that these reports are used to evaluate the performance of both Dispatchers and line personnel, his testimony did not establish whether the Dispatchers are specifically held accountable for the performance of the Servicers. There was additional testimony that Dispatchers receive an annual Performance Management Review (herein PMR) which affects their overall compensation. However, there is nothing in the record demonstrating that the PMR holds Dispatchers accountable for the actions or inactions of the Servicers. In addition, the Employer’s witnesses admit that the Dispatchers cannot discipline Servicers, therefore, it is clear that the Dispatchers have not been bestowed with the authority to take corrective action against the Services.

Accordingly, based upon all of the foregoing, I find that the Employer has failed to establish that Dispatchers are supervisors within the meaning of Section 2(11) of the Act. Thus, it is necessary to determine if a self-determination election is appropriate to determine whether

Dispatchers wish to be represented in the existing Roanoke unit or if the only appropriate unit is a stand-alone unit of Dispatchers.

**B. The Appropriateness of a Self-Determination Election**

The Petitioner seeks a self-determination election whereby the Dispatchers would vote as to whether they wish to be included in the existing Roanoke unit or remain unrepresented. This type of election is referred to as an Armour-Globe self-determination election. NLRB v. Raytheon Company, 918 F.2d 249, 250 (1990). The Employer opposes an Armour-Globe election and asserts that, should the Dispatchers be found to be employees, the only appropriate unit in which they can be represented is a stand-alone unit, as they do not share a community of interest with the Roanoke unit employees.<sup>14</sup> In determining the appropriateness of an Armour-Globe election, the Board examines whether the petitioned-for employees share a community of interest with the represented bargaining unit. Id. at 251. If there is a sufficient community of interest between the fringe employees and the existing bargaining unit employees, an Armour-Globe election is deemed appropriate.

Under the community of interest analysis, the Board examines the nature of supervision; benefits; differences in training and skills; functional integration; working conditions; interchange; and the history of bargaining and extent of organization. Vincent M. Ippolito, Inc., 313 NLRB 715, 717 (1994)(citing Kalamazoo Paper Box Corp., 136 NLRB 134 (1962), enforced mem. 54 F.3d 769 (3<sup>rd</sup> Cir. 1995)). Here, I find that there is a sufficient community interest between the Dispatchers and Roanoke unit employees, and, therefore, I shall direct an Armour-Globe self-determination election.

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<sup>14</sup> I find the Employer's argument that the Dispatchers do not share a community of interest with the Roanoke unit inconsistent with its assertion that the Dispatchers supervise line personnel, as supervision in and of itself implies that there is a high degree of functional integration and daily interaction between the two groups of employees.

In regard to the commonality of supervision, the Dispatchers report immediately to the two Dispatcher supervisors at the Roanoke DDC, who in turn report to Roanoke DDC Manager Jones. On the other hand, none of the bargaining unit employees report to any management officials at the Roanoke DDC. Instead, they report to the SDS at their designated reporting location, who in turn reports to MDS Mercier. Nonetheless, the Dispatchers share common supervision with the Roanoke unit as MDS Mercier and Roanoke DDC Manager Jones both report to the Vice President Wright. Furthermore, both the Dispatchers and Roanoke unit employees are managed by the same Roanoke Regional Human Resource Manager and are required to comply with the same company-wide rules and policies. For example, all employees receive a copy of the Employer's safety manual, whether the employees work in Virginia, West Virginia or Kingsport, Tennessee.

The Dispatchers and Roanoke unit employees enjoy the same benefits and holidays. There are differences in the wage structures and wage scales. For example, Dispatchers are treated as exempt, salaried employees and have a higher earning potential than most of the Roanoke unit classifications. Roanoke unit employees are treated as non-exempt, hourly employees. However, at the end of the day both Dispatchers and Roanoke unit employees earn overtime and the Dispatchers' paychecks reflect an hourly rate of pay. Neither Roanoke unit employees nor Dispatchers punch a time clock. Furthermore, although the percentages may differ, both Roanoke unit employees and Dispatches participate in the company-wide incentive plan under which employees receive performance bonuses.<sup>15</sup>

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<sup>15</sup> On cross-examination the Employer's witness was questioned as to whether the bonus percentages differ even among Roanoke unit employees. The witnesses response was ambiguous, thus, the record is unclear as to whether bonuses differ even among Roanoke unit employees.

With respect to education levels, Labor Relations Manager James Perry testified that the Employer “prefers” that Dispatchers have a two-year technical degree or the equivalent, whereas line personnel are only required to have vocational training or a high school degree. However, Perry also testified that similarly to Dispatchers, the Employer requires that the Station Electricians and Meter Revenue Operations Technician A, two of the lines of progression in the Roanoke unit, also have a two-year degree. Likewise, the Fleet Mechanics are required to maintain various certifications. Thus, like the Dispatchers, there are classifications in the Roanoke unit that are required to attain and maintain a certain education level and expertise in their field. The evidence further shows that similarly to Dispatchers, if Roanoke unit Line Mechanics and Station Electricians do not reach a certain level in their line of progression within a designated period of time, their employment is terminated.

Although the above factors are persuasive, the functional integration between the Roanoke unit and Dispatchers truly evidences the community of interest shared between the two groups of employees. In this regard, there was testimony that the Dispatchers receive approximately 275 trouble orders a day. Trouble orders may require that the load from one circuit be switched to another. Servicers cannot switch the loads without the detailed planning and step-by-step guidance from a Dispatcher. Even when performing routine work, Servicers verbally communicate with a Dispatcher anywhere from 2 to 4 times a day, as they must always get permission to re-energize or close a line as someone else may be working on the same line. Dispatchers, via the OMS database, are the only persons with knowledge of the activity on the entire distribution line, thus, Servicers rely on the Dispatchers review of the distribution line to insure that they do not harm themselves as well as others. The Dispatcher currently assigned to the Roanoke/Rocky Mount geographical areas testified that 90% of his day is spent communicating with both bargaining unit and non-represented line personnel, station servicers,

meter and fleet personnel, as opposed to 10% on completing paperwork and working with fellow DDC employees. He spends 50% of his time directly interacting with the Roanoke bargaining unit employees. Another Dispatcher currently assigned to a geographical territory in West Virginia, testified that he spends about 99% of his day interacting with the same job classifications in West Virginia. Even though he is assigned to West Virginia, he testified that he still has some interaction with Roanoke unit employees.

Integration of the two groups of employees is further evidenced by the cross-training that Dispatchers receive as part of their overall training and development. The testimony establishes that anywhere between once or twice a year, Dispatchers will be sent into the field to work directly with the job classifications they interact with on a daily basis, so they have a better understanding of the work involved. Thus, the Employer's own training program recognizes that the Dispatchers and Roanoke unit employees functionally rely on one another in the performance of their duties.

Finally, I note that historically when Dispatchers have been found to be employees under the Act, the Board has included them in a production and maintenance unit. Connecticut Power & Light, 121 NLRB 768, 770-772 (1958); *Also see* Pacific Gas & Electric Company, 97 NLRB 1397, 1402 (1952) (where Board concluded dispatchers should be included in system-wide physical unit because they "perform vital functions in the integration and coordination of the Employer's electric utility system.")

There is no evidence of interchange between the two groups of employees. In addition, the Dispatchers and Roanoke unit employees work under different conditions. In this regard, the 5 lines of progression in the Roanoke unit are "physical" employees in the sense that they do not work in office conditions, but instead generally work out in the field, whether it is outdoors on the distribution line or in a garage-like facility. The Roanoke unit employees do not report to the

DDC, but instead report to their assigned service center or smaller reporting location. The service centers and reporting locations range from 3 to 25 miles from the Roanoke DDC. A majority of the bargaining unit employees report to the Roanoke service center which is only 3 miles from the Roanoke DDC. In addition, the unit employees generally work 8-hour shifts and must wear protective equipment and uniforms.

To the contrary, the Dispatchers work 12-hour shifts in a climate-controlled office-environment along with mostly other “non-physical” employees at the Employer’s Franklin Road facility.<sup>16</sup> None of the Franklin Road facility employees are part of the Roanoke unit. The Dispatchers do not wear uniforms, nor do they wear any type of protective gear,

Nevertheless, I find that the differences in work conditions are insufficient to warrant a stand-alone unit of Dispatchers especially in light of the fact that even the lines of progression within the Roanoke bargaining unit work under different conditions (i.e. different hours; different immediate supervision; different reporting locations; some work more regularly outside in the elements than others; some spend more time driving vehicles than others) and often have more daily interaction with the Dispatchers than each other. Furthermore, although they report to different locations, the Roanoke unit employees and Dispatchers all work within the same geographical proximity, that being the surrounding area of Roanoke. In fact, a majority of the Roanoke unit employees report to the Employer’s Roanoke service center, which is approximately 3 miles from the Franklin Road facility where the DDC is located.

As stated earlier the bargaining history between the Petitioner and Employer spans a 65-year period. However, there is no past bargaining history between the parties over the Dispatchers as a stand-alone unit or as part of a system-wide production and maintenance unit. Thus, the bargaining history is not telling in the instant case. The extent of organization is only

evidenced by the fact that the Petitioner now seeks to represent the Dispatchers as part of the Roanoke unit.

Finally, I note that there is nothing in the Act that requires that the petitioned-for bargaining unit be the *only* appropriate unit or the *most* appropriate unit; the Act only requires that the unit be *an* appropriate unit. Bartlett Collins Co., 334 NLRB 484 (2001) Thus, although I may agree with the Employer that in the instant case the most appropriate unit would be a stand-alone unit of Dispatchers, I find, based on the above, that the Dispatchers and Roanoke bargaining unit employees share a sufficient community of interest, such that an Armour-Globe self-determination election is appropriate.

## V. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

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<sup>16</sup> The only physical employees at the Franklin Road facility are the couriers.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Distribution Dispatchers I, II, III, IV, and V, employed by the Employer at its distribution dispatch center located in Roanoke, Virginia, but excluding all casual employees, temporary employees, confidential employees, clerical employees, accounting employees, technical employees, sales employees, janitors, production and maintenance employees, meter revenue operations employees, and guards, professional employees, and supervisors as defined in the Act.

## **VI. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above.

The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Local Union 978, International Brotherhood of Electrical Workers, AFL-CIO. Specifically, if a majority of valid ballots are cast for Local Union 978, International Brotherhood of Electrical Workers, AFL-CIO, they will be taken to have indicated the employees' desire to be included in the existing Roanoke & Rocky Mount Districts Bargaining Unit represented by Local Union 978, International Brotherhood of Electrical Workers, AFL-CIO. If a majority of valid ballots are not cast for representation, they will be taken to have indicated the employees' desire to remain unrepresented. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

### **A. Voting Eligibility**

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been

permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

**B. Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U. S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 4035 University Parkway, Suite 200, P. O. Box 11467, Winston-Salem, NC 27116-1467 on or before **January 5, 2007**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at 336/631-5210. Since the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need to be submitted. If you have any questions, please contact the Regional Office.

**C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

**V. Right to Request Review**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14<sup>th</sup> St. N. W. Washington, DC 20570 and received by the Board in Washington by **January 12, 2007**. The request may not be filed by facsimile.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at [www.nlr.gov](http://www.nlr.gov). On the home page of the website, select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

Dated at Winston-Salem, North Carolina, on the 29th day of December, 2006.

/s/ Patricia L. Timmins  
Patricia L. Timmins, Acting Regional Director  
National Labor Relations Board  
Region 11  
4035 University Parkway, Suite 200  
P. O. Box 11467  
Winston-Salem, North Carolina 27116-1467